IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4215 OF 2005

Sau. Vijaya Mahadev Aiwale ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. Umesh Mankapure Applicant.
Ms U. V. Nikam, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATED : JULY 18, 2005.

P.C.:

1. Heard Advocate appearing for the Applicant and the learned A.P.P. for the State. The Applicant who is a woman, aged 25 years is stated to be a housewife. The allegation against the Applicant and the co-accused is for commission of offences punishable under section 376, 323, 509, 506 read with section 34 of the Indian Penal Code. The specific allegation of commission of offences under section 376, 323, 509 and 506 of the said Code is made against the brother of the Applicant Shivaji.

2. The learned Counsel for the Applicant invited my attention to the observations made by the learned Sessions Judge while rejecting the Application for Anticipatory Bail made by the Applicant. The learned Sessions Judge observed that the submission made by the Advocate for the Applicant that there was consent on the part of the prosecutrix appears to be probable. The learned Judge has also observed that on the date of the incident age of the prosecutrix was more than

sixteen years. The only allegation against the Applicant is that she aided her brother in commission of offence when offence was committed by her brother in her house. In the circumstances, the learned Counsel for the Applicant submitted that with a view to avoid undue harassment to the Applicant, she is entitled to the Anticipatory Bail. The learned A.P.P. pointed out that the allegations against the Applicant and her co-accused are of very serious nature. He submitted that investigation is incomplete and the Applicant cannot be enlarged on bail as the offence is of serious nature.

3. It will be, therefore, necessary to examine what is the allegation of the prosecutrix against the Applicant. The prosecutrix has stated in her complaint that she is closely related to the Applicant. Her case is that as water is not available at her residence, she used to go to the house of the Applicant for washing clothes. It is her allegation that prior to 'Dasra' festival she has visited the house of the Applicant for washing clothes when Applicant's brother caught hold of her. At that time, the Applicant bolted door of the room from outside and thereafter, the accused committed offence under section 376 of the Indian Penal Code. Her version is that thereafter also the prosecutrix used to visit the house of the Applicant for washing clothes. Her

allegation is that whenever the prosecutrix used to visit the house of the Applicant after the first incident, the accused Shivaji used to be there and the Applicant used to leave house giving the opportunity to the co-accused to have sexual intercourse with the prosecutrix. The complaint appears to have been lodged by the prosecutrix only after she delivered a child. The other allegation made against the Applicant by the prosecutrix is that she was insisting that the prosecutrix should get married with her brother Shivaji.

4. While dealing with the Application for Anticipatory Bail made by the Applicant, the learned Judge has already observed that the submission made by the Advocate for the Applicant that there was consent on the part of the prosecutrix is probable. If there such a gross delay in filing the complaint and if the allegations made against the applicant are as narrated above, there is no reason to harass the Applicant who is a housewife by detaining her in custody. To avoid such harassment, the Applicant is entitled to pre-arrest bail. However, condition of attendance will have to be imposed while granting Anticipatory Bail.

5. Hence, I pass the following order;

: O R D E R :

i) In the event of the arrest of the Applicant in connection with C.R.No.88 of 2005 of Vita Police Station, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.10,000/- with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant will attend the concerned Police Station on every Sunday from 11.00 a.m. to 01.00 p.m. till the chargesheet is filed and will co-operate with the Investigating Officer for investigating.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of

opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till chargesheet is filed. Thereafter, she will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE